

ORIGINAL

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OFELIA COLOYAN,

Plaintiff,

vs.

WILLIAM BADUA,
JEFFERY OMAI,
SPENCER ANDERSON,
NEIL PANG,
and DOES 5-10;

Defendants.

) CIV. NO. 03-476 KSC

)

)

)

) PLAINTIFF'S OPPOSITION TO

) DEFENDANTS WILLIAM

) BADUA, SPENCER ANDERSON

) AND JEFFREY OMAI'S BILL OF

) COSTS; DECLARATION OF

) OFELIA COLOYAN; DECLARATION

) OF JACK SCHWEIGERT, ESQ;

) DECLARATION OF RORY SOARES

) TOOMEY; EXHIBIT 1;

) CERTIFICATE OF SERVICE

)

) Trial: March 14 through 17, 2006

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 26 2006

at 3 o'clock and 1 min. M
SUE BEITIA, CLERK

PLAINTIFF'S OPPOSITION TO DEFENDANTS WILLIAM P. BADUA, SPENCER ANDERSON AND JEFFREY OMAI'S MOTION FOR BILL OF COSTS

COMES NOW Plaintiff Ofelia Coloyan, and notes her opposition to Defendants William P. Badua, Spencer Anderson and Jeffrey Omai's Motion for Bill of Costs dated April 24, 2006.

The grounds for this opposition are as follows:

1. A Notice of Appeal was filed on April 24, 2006. Therefore, there is a question regarding jurisdiction to address this issue.
2. Further, there is a huge disparity in the economic resources of the parties to this civil rights claim. Ms. Coloyan's claim was legitimate and brought in good faith. Case law is legion that costs may be denied when the claim of a plaintiff in a civil rights lawsuit is brought in good faith and the prevailing defendant has significantly larger financial resources. Badillo v. Central Steel & Wire Co., 717 F.2d 1160, 1165 (7th Cir. 1983); Poe v. John Deere Co., 695 F.2d 1103, 1108 (8th Cir. 1982); Coulter v. Newmount Gold Co., 873 F.Supp. 394, 397 (N.D. Nev. 1994); Regan v. Bankers Trust Co., 863 F.Supp. 1511, 1521 (Dist. of Utah 1994); Braxton v. United Parcel Service, Inc., 148 FRD 527, 528 (E.D. Pa. 1993); Martin v. Frontier Federal Savings & Loan, 510 F.Supp. 1062, 1069 (W.D. Okla. 1981); Schaulis v. CTB/McGraw Hill, Inc., 496 F.Supp. 666, 680 (N.D. Cal. 1980). As the declaration of Ofelia Coloyan

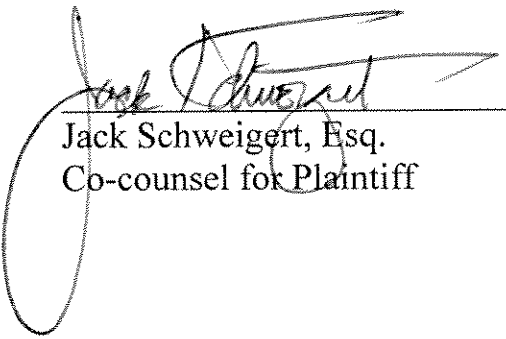
points out, her financial resources are limited. Conversely, the City's budget for 2004-2005 was **OVER** \$1,000,000,000.00.

3. Further, as to the Bill of Costs itself, Plaintiff objects to the unspecified copy charges for 5,077 pages @ \$.15 per page, without any back-up or identity of what the expense was actually for. The general statement of Ms. Kawai at paragraph 12 in her declaration does not help. There is not even a log sheet reflecting charges allocated to this case as is normally kept in law firms. Therefore, this claim cannot be verified as an allowable and necessary expense pursuant to 28 U.S.C. § 1920(4) and must be denied.

4. The video taping of Dr. Byron Eliashof, as well as the editing, which totals \$544.81 is objected to as unnecessary. The **STANDARD** method is to read the deposition transcript of a witness in accordance with deposition designations previously filed with the Court. The Defendants went beyond what is necessary and such expense should not be taxed to Ms. Coloyan.

For the foregoing reasons, the Bill of Costs should be denied.

DATED: Honolulu, Hawaii; April 26, 2006.



Jack Schweigert, Esq.
Co-counsel for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

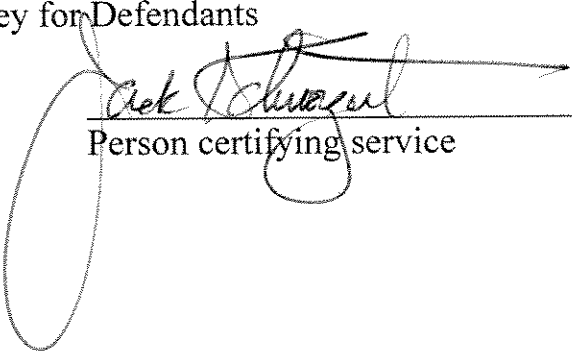
OFELIA COLOYAN,)	CIV. NO. 03-476 KSC
)	
Plaintiff,)	
vs.)	CERTIFICATE OF SERVICE
)	
WILLIAM BADUA,)	
JEFFERY OMAI,)	
SPENCER ANDERSON,)	
NEIL PANG,)	
and DOES 5-10;)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The below-signed hereby certifies that on April 26, 2006 one copy of the attached document was served on the below individual by U.S. Mail, first class postage prepaid send to the address indicated:

Kendra K. Kawai, Esq.
Deputy Corporation Counsel
530 S. King Street, Room 110
City & County of Honolulu
Honolulu, HI 96813

Attorney for Defendants



Person certifying service